

REMARKS

This is a full and timely response to the final Office Action mailed on February 23, 2005, (Paper No. 20050221). Reconsideration and allowance of the Application and presently pending claims 1-6, 8-39, 42-44, 45-57, and 59-69 are respectfully requested in view of the foregoing remarks. Applicants should not be presumed to agree with any statements made in the Office Action unless otherwise specifically indicated by Applicants.

I. Interview Summary

Applicants first wish to express his sincere appreciation for the time that Examiner Najjar spent with Applicant's Attorney, Minh Nguyen, during a telephone discussion on May 11, 2005 regarding the outstanding Office Action. Applicants believe that certain issues were identified during the telephone discussion, and that they are resolved herein. The discussion involved proposed claims in which claims 1 and 56 were amended to include allowable subject matter of claims 7 and 58, respectively. Further, claims 10, 15, 20, 28, 34, and 59 were amended to include the features of providing a user with a list of removed media titles. The Examiner indicated that proposed claims 1 and 56 are allowable. However, the Examiner indicated that proposed claims 10, 15, 20, 28, 34, 56 and 59 appear to be allowable, but the Examiner would like another review of the claims before indicating that proposed claims 10, 15, 20, 28, 34, 56 and 59 are allowable. Thus, Applicants respectfully request that the Examiner carefully consider this response and the amendments.

II. Allowable Subject Matter

Applicants greatly appreciate the Examiner's statement in the Office Action in which claims 7 and 58 have been indicated as allowable. Claims 7 and 58 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 7 and 58 depend on independent claims 1 and 56, respectively. Applicants have amended independent claims 1 and 56 to include the features of the claims 7 and 58, respectively. Thus, Applicants respectfully request that amended claims 1 and 56 be allowable.

In addition, Applicants have amended independent claims 10, 15, 20, 28, 34, and 59 to include the feature of providing a user with a list of removed media titles. Thus, Applicants respectfully request that amended claims 10, 15, 20, 28, 34, and 59 be allowable.

III. Rejections under 35 U.S.C. §102

Claims 1-3, 5-6, 8-12, 14-17, 19, 42-44, and 56-57 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No 6,104,334 to *Allport*. Claims 20-24, 26-30, 32-36, and 38-40 stand rejected as being anticipated by U.S. Patent No. 6,072,520 to *Yuen, et al.* Applicants respectfully traverse the rejection.

A proper rejection of a claim under 35 U.S.C. §102 requires that a single prior art reference discloses each element of the claim. *See, e.g., W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983).

A. Claims 1-3, 5-6, 42-44, and 56-57

Claims 1-3, 5-6, 8-9, and 42-44 include allowable subject matter of claim 7, as indicated in the Office Action. Claims 56-57 include allowable subject matter of claim 58, as indicated in the Office Action. Thus, Applicants respectfully request the claims 1-3, 5-6, 42-44, and 56-57 are allowable and the rejection be withdrawn.

B. Claims 10-12, 14-17, 19, 20-24, 26-27, 28-30, 32-36, and 38-40

Claims 10-12, 14-17, 19, 20-24, 26-30, 32-36, and 38-40 include the feature of providing a user with a list of removed media titles. Thus, Applicants respectfully request the claims 10-12, 14-17, 19, 20-24, 26-30, 32-36, and 38-40 are allowable and the rejection be withdrawn.

IV. Rejection under 35 U.S.C. 103(a)

Claims 4, 13, and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Allport*. Claims 25, 31, and 37 stand rejected as being unpatentable over *Yuen*. Claims 48, 61, and 63 stand rejected as being unpatentable over *Yuen* in view of U.S. Patent No. 6,637,029 to *Maisel, et al.* In order for a claim to be properly rejected under 35 U.S.C. §103, the teachings of the prior art reference must suggest all features of the claim invention to one of ordinary skill in the art. *See, e.g., In re Dow Chemical*, 837 F.2d 469, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 642 F.2d 413, 208 U.S.P.Q. 871, 881 (C.C.P.A. 1981).

Claims 4, 13, 18, 25, 31, 37, 48, 61, and 63 include the feature of providing a user with a list of removed media titles, which is similar to the allowable feature of claim 7. Thus, Applicants respectfully request the claims 4, 13, 18, 25, 31, 37, 48, 61, and 63 are allowable and the rejection be withdrawn.

V. Claims 46-47, 49-55, 59-60, 62, and 64-69

Claims 46-47, 49-55, 59-60, 62, and 64-69 were not objected nor rejected in the Office Action. However, claims 46-47, 49-55, 59-60, 62, and 64-69 include the feature of providing a user with a list of removed media titles, which is similar to the allowable feature of claim 7. Thus, Applicants respectfully request the claims 46-47, 49-55, 59-60, 62, and 64-69 are allowable and the rejection be withdrawn.

VI. Miscellaneous

Applicants respectfully traverse all Office Notices and well-known allegations made in the Office Action and submit such should not be considered well-known because the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support the conclusions. The Office Action has taken Official Notice that “the concept and advantages of implementing a program guide in a video on demand system is old and well known in the art.” (Page 5, paragraph 6 of the Office Action)

According to MPEP 2144.03, "It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well

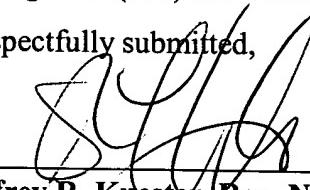
known are not capable of instant and unquestionable demonstration as being well-known." MPEP 2144.03 also states that "If such notice is taken, the basis for such reasoning must be set forth explicitly. The Office Action must provide specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge." Accordingly, Applicants respectfully traverse the above conclusions and submit that the subject matter noted above should not be considered well known because the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support the conclusions. Accordingly, Applicants submit that it has not been shown that the material asserted to be well-known is capable of instant and unquestionable demonstration as being well-known.

Any other statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Furthermore, any and all findings of well-known art and official notice, or statements interpreted similarly, should not be considered well-known since the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support such conclusions.

CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicants respectfully submit that all rejections have been traversed and that the pending claims 1-6, 8-39, 42-44, 45-57, and 59-69 are in condition for allowance. Favorable reconsideration and allowance of the present application and pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephone conference would expedite the examination of this matter, the Examiner is invited to contact the undersigned agent at (770) 933-9500.

Respectfully submitted,



Jeffrey R. Kuester, Reg. No. 34,367

**THOMAS, KAYDEN,
HORSTEMEYER & RISLEY, L.L.P.**
Suite 1750
100 Galleria Parkway N.W.
Atlanta, Georgia 30339
(770)933-9500